Supreme Court, U.S.
FILED
NOV 16 1994
OFFICE OF THE CLERK

No. 94-286

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

FREIGHTLINER CORPORATION,
Petitioner,
v.
BEN MYRICK and EMILY MYRICK,
Respondents.

NAVISTAR INTERNATIONAL TRANSPORTATION CORP.,
Petitioner,
v.
JACK LINDSEY, Executor of the Estate and Surving Spouse of Grace C. Lindsey,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

BRIEF AMICUS CURIAE OF THE TRUCK TRAILER MANUFACTURERS ASSOCIATION IN SUPPORT OF PETITIONERS

JOHN M. HEWSON
GLEN M. DARBYSHIRE
(Counsel of Record)
HUNTER, MACLEAN, EXLEY & DUNN, P.C.
200 East St. Julian Street
Post Office Box 9848
Savannah, Georgia 31412-0048
(912) 236-0261
Counsel for Amicus Curiae Truck Trailer Manufacturers Association

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I. THE SAFETY ACT EXPRESSLY PREEMPTS STATE COMMON LAW CLAIMS WHICH ATTEMPT TO IMPOSE LIABILITY UNDER STANDARDS THAT CONFLICT WITH FEDERAL MOTOR VEHICLE SAFETY STANDARDS	6
II. STANDARD NO. 121 CONFLICTS WITH RESPONDENTS' STATE COMMON LAW CLAIMS	12
III. RECOGNITION OF EXPRESS PREEMPTION WILL ENSURE NATIONAL UNIFORMITY FOR FEDERAL MOTOR VEHICLE SAFETY STANDARDS AND WILL PROMOTE NHTSA EFFORTS TO DEVELOP AND ENFORCE THESE STANDARDS	15
CONCLUSION	18

TABLE OF AUTHORITIES

CASES — Page

Chicago & North Western Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311 (1981) 8, 10
Cippolone v. Liggett Group, Inc., 112 S. Ct. 2608 (1992) 6, 7, 15
CSX Transp., Inc. v. Easterwood, 113 S. Ct. 1732 (1993) 7
International Paper Co. v. Ouellette, 479 U.S. 481 (1987) 14
Miranda v. Fridman, 647 A.2d 167 (N.J. Super. 1994) 10
Morales v. Trans World Airlines, Inc., 112 S. Ct. 2031 (1992) 10, 11
Myrick v. Freuhauf Corp., 13 F.2d 1516 (11th Cir. 1994) 9
Paccar v. National Highway Traffic Safety Administration, 573 F.2d 632 (9th Cir.), *cert. denied*, 439 U.S. 862 (1978) 3, 12-14
Pennsylvania R.R. v. Puritcn Coal Mining Co., 237 U.S. 121 (1915) 8, 10
Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1947) 8
San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236 (1959) 7
Taylor v. General Motors Corp., 875 F.2d 816 (11th Cir. 1989), *cert. denied*, 494 U.S. 1065 (1990) 9
Texas & Pacific Railway Co. v. Abilene Cotton Oil Co., 204 U.S. 426 (1907) 8

CONSTITUTION

U.S. Const. Art. VI, cl. 2 3

STATUTES

5 U.S.C. § 551 *et seq.* 13
5 U.S.C. § 701 *et seq.* 13
15 U.S.C. § 1391 3
15 U.S.C. § 1391(1) 4, 5
15 U.S.C. § 1391(2) 5

TABLE OF AUTHORITIES—Continued

Page

15 U.S.C. § 1392 ..... 2, 3
15 U.S.C. § 1392(a) 4, 5
15 U.S.C. § 1392(d) 4, 6-9, 11
15 U.S.C. § 1392(e) 4
15 U.S.C. § 1392(f) 12-13
15 U.S.C. § 1392(f)(3) 5
15 U.S.C. § 1395(b) 12
15 U.S.C. § 1396 12
15 U.S.C. § 1397(k) 4, 7
15 U.S.C. § 1398 17
49 U.S.C. App. § 1305(a)(1) 10
49 U.S.C. § 1381 2
49 U.S.C. App. § 1506 11
49 U.S.C. § 10103 8
49 U.S.C. § 30101 2

REGULATORY MATERIALS

44 Fed. Reg. 46,849 12
57 Fed. Reg. 252 17
57 Fed. Reg. 12,289 17
49 C.F.R. § 393 Subpart B 15, 16
49 C.F.R. § 571.1 ..... 4, 15
49 C.F.R. § 571.108 16
49 C.F.R. § 571.108.S5.1.3 16
49 C.F.R. § 571.121 ..... 3, 13
49 C.F.R. § 571.121.S3 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

No. 94-286

FREIGHTLINER CORPORATION,
Petitioner,
v.
BEN MYRICK and EMILY MYRICK,
Respondents.

NAVISTAR INTERNATIONAL TRANSPORTATION CORP.,
Petitioner,
v.
JACK LINDSEY, Executor of the Estate and
Surving Spouse of Grace C. Lindsey,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

BRIEF AMICUS CURIAE OF THE TRUCK TRAILER MANUFACTURERS ASSOCIATION IN SUPPORT OF PETITIONERS

STATEMENT OF INTEREST

The Truck Trailer Manufacturers Association ("TTMA") respectfully submits this brief *amicus curiae* in support of the petitioners in this case. Letters reflecting the consent of all parties to the filing of this brief have been obtained and delivered to the Court.

TTMA is an organization whose members manufacture large truck and tractor pulled trailers or supply these manufacturers with materials, components and services. TTMA members manufacture over 90% of the total production in the United States of truck trailers, tank trailers, cargo containers, cargo tanks for trucks, and container chassis. More than 200,000 such vehicles will be manufactured in 1994. TTMA membership also includes trailer manufacturers and suppliers in Canada and Europe whose products are sold for use in the United States.

The trailers manufactured by TTMA members are the subject of extensive regulation by the National Highway Traffic Safety Administration ("NHTSA"), which has issued hundreds of safety standards governing the design, manufacture and performance of trailers used in interstate commerce. These standards have been promulgated pursuant to 15 U.S.C. § 1392, the enabling statute under review in this case.[1] With respect to each safety standard, the issue of federal preemption and the need for consistent rulings throughout the United States are of paramount importance to TTMA members.

This case will determine whether TTMA members can rely on NHTSA safety standards (which they must follow) to ensure national uniformity for interstate transportation, as envisioned by Congress and where required by NHTSA, or whether disparate jury verdicts assigning State common law liability will be permitted, even where these verdicts conflict directly with NHTSA safety standards.

---

[1] At all times material to this lawsuit, the Safety Act was codified at 49 U.S.C. § 1381 *et seq.* The Act was recently recodified without substantive change at 49 U.S.C. § 30101 *et seq.* To promote ease of reference to the record in this case and to the lower court decisions, TTMA will utilize the section numbers from the prior codification.

SUMMARY OF ARGUMENT

The National Traffic and Motor Safety Act defines Federal safety standards in terms identical to traditional standards utilized under State common law to determine liability for negligent or defective product design or manufacture. Federal safety standards must be objective, reasonable, practicable and appropriate in light of the available safety technology. 15 U.S.C. §§ 1391, & 1392. Common law negligence and strict liability claims require proof of unreasonable conduct or dangerous conditions, objectively measured, as well as alternative feasible, safer technology.

In promulgating Motor Vehicle Safety Standard No. 121, the National Highway Traffic Safety Administration has found—as a matter of Federal law—that the use of air brakes without antilock devices on large trucks and trailers is reasonable and safe. Installing air brakes without antilock devices fully satisfies Standard No. 121. 49 C.F.R. § 571.121. This finding has also been judicially determined. In *Paccar, Inc. v. National Highway Traffic Safety Admin.*, 573 F.2d 632, 643 (9th Cir.), *cert. denied*, 439 U.S. 862 (1978), the Court prohibited enforcement of a Federal safety standard requiring the use of antilock devices on large trucks and trailers.

Nonetheless, Respondents demand that State common law juries be allowed to find—as a matter of State law—that the use of air brakes without antilock devices is unreasonable and unsafe. Such a finding would in practice require installation of antilock devices on all trucks and trailers used in that State and would deprive manufacturers of their option under Standard No. 121 not to install such devices. It would therefore conflict with the Federal safety standard and the *Paccar* decision, and would undermine the methods NHTSA has established for achieving vehicle safety after consideration of available technology, relative risks and practicable alternatives.

The Supremacy Clause mandates preemption of conflicting State law. U.S. Const. Art. VI, cl. 2. The

Safety Act expressly preempts conflicting State law: No State shall have any authority to establish or continue in effect any safety standard which is "not identical" to the Federal standard. 15 U.S.C. § 1392(d). Even assuming that the Safety Act's so-called "savings clause" addresses the issue of Federal preemption, it simply preserves State common law that does not conflict with Federal safety standards. 15 U.S.C. § 1397(k). The clause evidences congressional intent not to impliedly preempt the entire field of motor vehicle safety regulations. It is consistent with the preemption clause and does not undermine a finding of express preemption in this case.

Congress has assigned responsibility for modifying Federal safety standards to NHTSA. 15 U.S.C. § 1392(e) If NHTSA should modify a particular Federal standard, it must do so for the same reasons a State common law jury would impose liability under a different standard. To ensure nationwide uniformity of NHTSA standards, the Court should not arrogate to State common law juries the authority Congress has assigned to NHTSA under the Safety Act.

ARGUMENT

Congress enacted the National Traffic and Motor Safety Act in 1966 to protect "against unreasonable risk of accidents occurring as a result of the design, construction or performance of motor vehicles and . . . against unreasonable risk of death or injury to persons in the event accidents do occur. . . ." 15 U.S.C. § 1391(1). The Safety Act authorized the Secretary of Transportation to promulgate Federal motor vehicle safety standards having nationwide application. 15 U.S.C. § 1392(a). Under the Secretary's direction, the National Highway Traffic Safety Administration ("NHTSA") has issued hundreds of such standards governing the design, manufacture and performance of motor vehicles, including conventional truck trailers and other special use cargo tanks and trailers. *See* 49 C.F.R. § 571.1 *et seq.*

The Safety Act defines Federal safety standards in terms identical to traditional standards utilized under State common law to determine liability for negligent or defective product design or manufacture. NHTSA is to protect against "unreasonable" risks of accidents, injury or death. 15 U.S.C. § 1391(1). Each NHTSA safety standard must be "practicable" and provide "objective criteria" in meeting the need for such safety. 15 U.S.C. §§ 1391(2) & 1392(a). NHTSA must consider whether proposed safety standards are "reasonable," "practicable" and "appropriate." 15 U.S.C. § 1392 (f)(3). Common law negligence rests on similar standards of reasonableness, objectively measured. Strict liability requires proof of a defective product creating an unreasonably dangerous condition, as well as a feasible alternative design or manufacturing process that does not create this dangerous condition. The parallel between the governing criteria for NHTSA safety standards and State common law liability reveals the inherent potential for conflicts between the Federal standards and State common law jury verdicts that impose liability on manufacturers based on differing assessments of what is reasonable and practicable. Where those assessments conflict, the Supremacy Clause and the express terms of the Safety Act mandate that the Federal standards prevail.

This case will clarify the scope of preemption afforded motor vehicle safety standards promulgated by NHTSA, and particularly the effect of those standards on State common law tort claims alleging negligent or defective product design or manufacture. In this brief, TTMA will outline its position on the preemption issue and will urge the Court to adopt a straightforward express preemption analysis. TTMA will also address, by way of example, the potential effect of the Court's ruling on NHTSA safety standards other than Standard No. 121, which regulates the air brake systems and antilock devices at issue in this case.

I. THE SAFETY ACT EXPRESSLY PREEMPTS STATE COMMON LAW CLAIMS WHICH ATTEMPT TO IMPOSE LIABILITY UNDER STANDARDS THAT CONFLICT WITH FEDERAL MOTOR VEHICLE SAFETY STANDARDS.

In the decision of the Court of Appeals below and in the petition for a writ of certiorari, response and other *amicus curiae* briefs filed in this Court, considerable analysis is offered regarding this Court's decision in *Cipollone v. Liggett Group, Inc.*, 112 S. Ct. 2608 (1992), and the statement in the plurality opinion in that case that courts should not consider implied preemption theories where a statute contains an express preemption clause that provides a "reliable indicium of congressional intent with respect to state authority." *Id.* at 2618. The focus of this analysis is whether the Safety Act in fact reliably indicates Congressional intent regarding the preemption of State common law claims and, if not, whether the applicable Federal and State standards conflict such that a finding of implied preemption is warranted.

While TTMA endorses, as a secondary position, the arguments of petitioners and supporting *amici* that implied conflict preemption is an appropriate analytical theory for deciding this case, the analysis is not necessary. TTMA submits that the "reliable indicium" statement in *Cipollone* need not be defined here. Simply put, the *Cipollone* decision presents no impediment to finding that Federal motor vehicle safety standards preempt conflicting State common law standards. To the contrary, *Cipollone* fully supports a finding of *express* preemption based on the text of the Safety Act fairly construed.

The preemption clause of the Safety Act evidences Congress' intent that NHTSA safety standards have national, uniform effect. Section 1392(d) of the Act provides in part:

> (d) Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard.

15 U.S.C. § 1392(d). The plain meaning of this provision is that a State safety standard "not identical" to the Federal standard shall not be enforceable. Where a State standard conflicts with a Federal standard, it is not identical to that standard and, as commanded by the statute, cannot be enforced.[2]

The Safety Act also contains a "savings clause" that provides: "Compliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." 15 U.S.C. § 1397(k). This provision is entirely consistent with Section 1392(d) and does not foreclose express preemption analysis. To the extent that it even addresses Federal preemption, the savings clause simply affirms the intent of Congress that the safety standards promulgated by NHTSA not preempt *all* common law claims through implied field preemption.[3] This Court has

---

[2] The prohibition in Section 1392(d) against establishing or enforcing any State "safety standard" that conflicts with a Federal safety standard fully encompasses State common law jury verdicts even though that provision does not expressly reference common law claims. *See Cipollone v. Liggett Group, Inc.*, 112 S. Ct. 2608, 2619 (1992) ("requirement or prohibition" encompasses common law claims); *id.* at 2634 (Scalia, J., concurring); *CSX Transp., Inc. v. Easterwood*, 113 S. Ct. 1732, 1737 (1993) ("standard relating to railroad safety" encompasses common law claims); *see also San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959) (State common law award of damages may constitute regulation in conflict with Federal regulation).

[3] Field preemption operates where Congress has enacted a "scheme of federal regulation . . . so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it" and therefore the entire field of conduct is governed

previously examined other savings clauses and concluded that they simply indicated that Congress did not intend field preemption.

For example, in *Pennsylvania R.R. v. Puritan Coal Mining Co.*, 237 U.S. 121 (1915), and *Chicago & North Western Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311 (1981), the Court considered the preemptive scope of the Interstate Commerce Act and its savings clause, which provided that nothing in the Act "shall in anyway abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies." 49 U.S.C. § 10103 (1976 ed., Supp. III). The Court held that this savings clause was included in the Act to make clear that Congress, having decided to authorize regulation in the field of interstate rail transportation, nonetheless did not intend to occupy that field exclusively and thereby deprive State courts of jurisdiction to decide common law claims which do not conflict with or undermine enforcement of the Federal regulations. *See Puritan Coal*, 237 U.S. at 129-30; *Kalo Brick*, 450 U.S. at 328. Otherwise, if the savings clause were interpreted to allow prosecution of inconsistent common law claims, then the statute would, in effect, "destroy itself." *Texas & Pacific Railway Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426, 446 (1907).

Respondents argue that construing the savings clause merely to preclude implied field preemption renders it superfluous. *See* Respondents' Brief in Opposition to Petition, p. 16. The argument is, in essence, that preemption already operates under Section 1392(d) where the State standard is "applicable to the same aspect of performance" of the vehicle or equipment regulated, and therefore other State standards *not* applicable to that same aspect of performance are, by definition, not preempted and no savings clause is needed to preserve their

---

exclusively by Federal law. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

effect. Although this argument was accepted by the Court of Appeals in this case,[4] TTMA submits that it is not correct.

Under the Safety Act, a State standard can be applicable to the same aspect of performance as a Federal standard and still be preserved by the savings clause where the State standard does not conflict with the Federal standard or undermine its operation. For example, State common law claims alleging negligence by a manufacturer in implementing a Federal safety standard necessarily address the same aspect of performance as the Federal standard, but they are not preempted absent conflict with the Federal standard. State common law claims alleging defective design in implementing the Federal standard also address that same aspect of performance but are not preempted absent conflict. Similarly, common law claims based simply on an alleged failure to comply with a Federal safety standard—*per se* negligence claims—are not preempted absent conflict with the Federal standard, even though they, too, address the same aspect of performance as that

---

[4] The Court of Appeals accepted this argument because a prior three-judge panel of that court had concluded that otherwise the savings clause would be rendered " 'a mere redundancy.' " *Myrick v. Freuhauf Corp.*, 13 F.2d 1516, 1520 (11th Cir. 1994) (quoting *Taylor v. General Motors Corp.*, 875 F.2d 816, 824 (11th Cir. 1989), *cert. denied*, 494 U.S. 1065 (1990)).

For the same reason, the Court of Appeals also refused to hold that the preemption clause in the Safety Act applied to State common law standards as well as State statutes and regulations. *Myrick*, 13 F.2d at 1527 n.5. In this refusal, the Court was clearly wrong, for as already noted the Safety Act prohibition against enforcement of a conflicting State "safety standard," 15 U.S.C. § 1392(d), fully encompasses State common law. *See supra* note 1. Indeed, if the preemption clause of the Safety Act only preempts State statutes and regulations, then there is no need to preserve common law claims and it is the savings clause that is redundant.

These were the only two reasons given by the Court of Appeals for rejecting express preemption analysis. *See Taylor*, 875 F.2d at 824-25.

standard. These State law claims do not conflict with or undermine the Federal standard, but rather promote compliance with that standard. The savings clause is therefore not redundant.[5]

The extensive national regulation of motor vehicles that Congress envisioned under the Safety Act (and in fact subsequently developed by NHTSA) was certain to create the potential claim that Congress must have intended to preempt the entire field of vehicle safety regulation and thereby federalize State common law. To foreclose this argument, Congress included the savings clause, as it had in other statutes, to exclude any finding of implied field preemption. NHTSA regulations are at least as detailed and pervasive as the ICC regulations at issue in *Puritan Coal* and *Kalo Brick*, and the savings clause in the Safety Act, like the savings clause in those cases, serves to ensure that despite the breadth and complexity of Federal regulations, State common law continues to operate where it does not conflict with those regulations.

In *Morales v. Trans World Airlines, Inc.*, 112 S. Ct. 2031 (1992), the Court considered equally extensive regulations promulgated under the Airline Deregulation Act of 1978. The Court again declined to interpret a savings clause to permit prosecution of State law claims, this time in the face of an express preemption provision that was broadly worded to encompass any State law "relating to" rates, routes, or services of air carriers. 49 U.S.C. App. § 1305(a)(1). Even given the breadth of that operative preemption language, the Court held that

[5] But even if it were, it would be more appropriate to conclude that Congress was redundant than to conclude that it was senseless. If the Court were to find that the Savings clause is not needed to ensure the continuation of State common laws that do not conflict with NHTSA safety standards, it would seem more likely that Congress nonetheless included the clause out of redundance than for the purpose of completely overriding the express preemption clause through conflicting State common law jury verdicts. *See Miranda v. Fridman*, 647 A.2d 167, 174 (N.J. Super. 1994).

its specificity prevailed over the general character of the savings clause.[6] *Morales*, 112 S. Ct. at 2037-40. The preemption clause of the Safety Act at issue in this case offers still greater specificity, expressly allowing State law to address other aspects of safety performance not covered by a Federal standard and further allowing State law to address the same aspect of performance so long as it does not conflict with the Federal standard. The "not identical" operative language of the Safety Act, 15 U.S.C. § 1392 (d), is certainly more specific than the preemption clause contained in the Airline Deregulation Act, and therefore this specific clause should likewise prevail over the general savings clause of the Safety Act.

This consistent reading of the preemption clause and savings clause of the Safety Act gives both provisions the logical meaning Congress intended, and it preserves national uniformity on those aspects of vehicle equipment and performance for which NHTSA has issued safety standards that require uniformity. This goal of national uniformity is of particular importance to TTMA members, who manufacture thousands of trailers each year that are designed for and in fact are utilized in interstate transportation. If safety standards are allowed to vary from state to state in conflict with the Federal safety standards, then the interstate use of these trailers becomes a practical impossibility. Integrated trailer components required by NHTSA or designed to comply with NHTSA safety standards cannot be altered in the midst of interstate transport. Brake assemblies and other types of safety equipment simply cannot be interchanged at State lines to comply with a multitude of varying liability standards imposed by common law juries having differing inclinations from NHTSA.

[6] The savings clause provided that "[n]othing . . . in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies." 49 U.S.C. App. § 1506.

Recognizing express preemption also leaves the responsibility for defining appropriate safety standards with the agency Congress established for that purpose. The safety standards would continue to be established by neutral, experienced safety experts following notice and an opportunity for comment by all interested parties, including industry representatives, consumers, and State representatives who may wish to participate. *See* 15 U.S.C. §§ 1392(f), 1395(b) & 1396. This approach does not favor any of the interested parties, and it ensures nationwide uniformity.

II. STANDARD NO. 121 CONFLICTS WITH RESPONDENTS' STATE COMMON LAW CLAIMS.

The historical development of Standard No. 121 is summarized in detail in the reported decision in *Paccar, Inc. v. National Highway Traffic Safety Admin.*, 573 F.2d 632 (9th Cir.), *cert. denied*, 439 U.S. 862 (1978). After reviewing the state of available braking technology, NHTSA originally issued a Standard requiring the use of antilock devices on all truck and trailer service brakes. *Id.* at 639 n.26. However, field testing demonstrated that this Standard demanded more than was in fact technologically feasible for large trucks and trailers. Antilock components proved unreliable, and the result was that "many vehicles equipped with antilocks were potentially more dangerous in performance than pre-Standard vehicles. . . ." *Id.* at 643. For this reason, the Ninth Circuit in *Paccar* suspended enforcement of the antilock requirement, and NHTSA subsequently amended the Standard to exempt trucks and trailers from compliance with those requirements. *See* 44 Fed. Reg. 46,849 (1979); *see also* 49 C.F.R. § 571.121.S3. As a consequence, truck and trailer manufacturers now have the judicially ordered and agency sanctioned choice under Federal law of installing air brake systems without antilock devices, or air brake systems with antilock devices

that satisfy the optional criteria which remain a part of Standard No. 121.

Having survived the procedural rule-making requirements for issuing Federal safety standards, *see* 15 U.S.C. § 1392(f); 5 U.S.C. § 551, *et seq.* and 5 U.S.C. § 701 *et seq.*, both choices—simple air brake systems, and air brake systems with antilock devices—have been determined by NHTSA to be reasonable and practicable. Both choices are regulated in detail under Standard No. 121. *See* 49 C.F.R. § 571.121. The only restriction is that, until more convincing evidence of the reliability and safety of antilock devices for large trucks and trailers is collected, NHTSA cannot under *Paccar* again *require* installation of such devices on these vehicles. *See* 573 F.2d at 643. In the meantime, the option of installing air brakes without antilock devices remains an acceptable, safe alternative that fully satisfies the requirements of safety and practicability imposed by NHTSA.[7]

This finding by NHTSA following the *Paccar* decision that the use of air brakes without antilock devices is a reasonable, practicable and appropriate safety standard is the source of conflict with the Respondents' claims that

---

[7] Standard No. 121 is not a minimum performance standard. Despite the finding in *Paccar*, Respondents may argue that air brakes fitted with antilock devices are safer than air brake systems lacking such devices, and therefore a State common law jury verdict requiring the use of such devices comprises a higher performance standard that does not conflict with Standard No. 121. However, the *Paccar* history proves otherwise. NHTSA simply failed to establish that antilock devices are safer. Therefore, even though portions of the antilock provisions in Standard No. 121 are drafted in terms of performance requirements, those provisions in effect required the use of a specific type of equipment. If made compulsory by a State common law jury verdict, they would deprive the manufacturer of its present judicially-mandated option under Standard No. 121 to use other equipment NHTSA has deemed acceptable.

under State common law the Petitioners' failure to install antilock devices was unreasonable and unsafe. The Respondents' common law claims rest on the allegation that it was unreasonable for the manufacturers not to install antilock brakes. In other words, the Respondents must prove and the jury must find, as a matter of State law, that the use of air brakes without antilock devices was unreasonable. By contrast, Standard No. 121 reflects a finding, as a matter of Federal law, that the use of non-antilock brakes is a reasonable alternative.

The conflict between Federal and State law thus involves Respondents' request both that a jury change the rule from optional equipment to mandatory equipment, and that the jury reject as unreasonably dangerous air brake technology which Standard No. 121 defines as reasonably safe. The jury verdict requested by Respondents, if allowed, would delete from the Federal regulations an alternative preserved as a result of the *Paccar* decision and, in the face of the demonstrated potential for increased danger if antilock devices are required, would impose liability on manufactureres who, in full compliance with the Federal safety standard, elect not to utilize these devices.

This Court has held that State law is preempted if it interferes with the methods by which a Federal statute was designed to reach its goal. *International Paper Co. v. Ouellette*, 479 U.S. 481, 494 (1987). Allowing State common law jury verdicts to delete alternatives permitted under Federal law interferes with the methods NHTSA has established for achieving motor vehicle safety in this case. It further allows States to do indirectly what the Court in *Paccar* held NHTSA could not do directly—*require* the use of antilock devices on all trucks and trailers. *See id.* at 495.

III. RECOGNITION OF EXPRESS PREEMPTION WILL ENSURE NATIONAL UNIFORMITY FOR FEDERAL MOTOR VEHICLE SAFETY STANDARDS, AND WILL PROMOTE NHTSA EFFORTS TO DEVELOP AND ENFORCE THESE STANDARDS.

Even a cursory review of some of the Federal safety standards regulating truck trailer design, manufacture and performance reveals the variety of types of standards that NHTSA has promulgated. *See* 49 C.F.R. § 571.1 *et seq.* Some standards require the use of specific safety equipment or allow the manufacturer to choose among specified equipment options. Others do not specify equipment, but instead define performance criteria and leave the choice of technology to manufacturers. Still others define the standard in terms of required performance, while practical considerations and available technology mandate the use of specific equipment. State common law may impose equally varied safety standards, and each case must be evaluated separately to determine the precise nature of each claim asserted and whether the State standard of liability conflicts with any applicable Federal safety standard. *See Cipollone v. Liggett Group, Inc.*, 112 S. Ct. 2608 (1992).

As trailer manufacturers and suppliers of trailer component parts, TTMA members encounter numerous common law claims that allege violations of State safety standards. Many of these cases involve Federal standards not unlike Standard No. 121, in that they reflect NHTSA's evaluation of proposed alternative technologies and conflicting safety concerns and then establish a range of acceptable compliance options.

For example, NHTSA specifies minimum and maximum candlepower values for motor vehicle lighting equipment. *See* 49 C.F.R. § 571.108. The reason is obvious. Lights that are too bright can distract or impair the vision of other drivers and cause accidents. Lights that are not bright enough create different safety risks by not notify-

ing other drivers of the presence of another vehicle. Having complied with the lighting requirements by installing lights having candlepower values within the range allowed under the Federal standard, a manufacturer should not be subjected to common law liability for failing to *exceed* the standards in a case where the plaintiff claims the defendant's vehicle could not be seen, nor should the manufacturer be forced to defend against a claim that it should have used *less* candlepower in a different case where the plaintiff claims that the defendant's vehicle was equipped with lights that were too bright and impaired his vision.[8]

Another area of recurrent litigation for truck trailer manufacturers involves the performance of rear bumpers. On the one hand, plaintiffs have claimed that the bumpers are too rigid and cause excessive injuries due to both the deceleration forces sustained by the occupants of a vehicle that collides with the rear end of a trailer and the crush of the front end of the colliding vehicle itself. On the other hand, plaintiffs frequently claim that the bumpers are too flexible and permit a colliding vehicle to underride the trailer, causing the trailer to intrude into the vehicle's passenger compartment. NHTSA is presently reviewing available technology and test data for purposes of promulgating a safety standard regulating rear bumpers specifically for trucks and trailers, and it must attempt

[8] The use of reflectors and reflective tape presents a similar dilemma. *See* 49 C.F.R. 571.108; *see also* 49 C.F.R. § 393 Subpart B. Trailer manufacturers may be sued both by plaintiffs who claim that trailers were not sufficiently conspicuous and more reflective devises should have been used than is required under the Federal safety standard, as well as by other plaintiffs who claim that excessive reflective devises were used and created a distracting "billboard effect." The NHTSA safety standard in these cases is more akin to a true minimum standard, requiring certain reflectors but permitting States to require more unless doing so "impairs the effectiveness" of the Federally required reflectors. 49 C.F.R. § 571.108.S5.1.3. Depending on the circumstances of particular claims, State common law may not conflict with the Federal standard.

to harmonize the safety concerns that exist on both sides of this issue. *See* 57 Fed. Reg. 12,289 (Apr. 9, 1992); 57 Fed. Reg. 252 (Jan. 3, 1992).

A manufacturer's compliance with a Federal safety standard that establishes a range of acceptable performance or equipment options for circumstances such as these should, through express preemption analysis under the Safety Act, preclude imposition of State common law liability on grounds that the manufacturer should have exceeded the maximum or gone below the minimum set by Federal law or should have used some other type of equipment not included in the list of acceptable options. The manufacturer fully complied with the Federal standard by installing equipment that performs in a manner expressly deemed safe by the agency Congress created to investigate risks, evaluate technology and define reasonably safe, practicable and appropriate standards. Congress deemed the expertise of this agency sufficiently paramount to expressly preempt contrary findings by State common law juries. Each range of allowable performance or list of optional safety equipment is established by NHTSA after extensive study and testing.

Permitting manufacturers to rely on compliance with NHTSA standards is only fair in light of the fact that they can be held liable under State common law on a theory of *per se* negligence if they *fail* to comply with a Federal standard. NHTSA can also impose civil penalties if they do not comply with the Federal standard. *See* 15 U.S.C. § 1398. Surely Congress did not intend to require manufacturers to comply with Federal standards on penalty of Federal regulatory sanctions and State common law liability, while at the same time permitting plaintiffs to allege that some *other* conflicting safety standard should have been followed as a matter of State common law.

This argument applies with equal force where the Federal safety standard is defined in terms of a range

of acceptable performance or list of acceptable equipment options. If NHTSA should modify a specific performance range or delete equipment options, it must do so for the same reasons a State common law jury would reject a manufacturer's choice of approved technology. Under the Safety Act, this is NHTSA's responsibility and not the responsibility of State common law juries who, because of differing factual circumstances from case to case, will impose different standards from state to state. In deciding this case, the Court should not arrogate to common law juries the authority Congress assigned to NHTSA under the Safety Act.

CONCLUSION

For these reasons, TTMA respectfully submits that the judgment of the Court of Appeals below should be reversed.

Respectfully submitted,

JOHN M. HEWSON
GLEN M. DARBYSHIRE
(Counsel of Record)
HUNTER, MACLEAN, EXLEY
& DUNN, P.C.
200 East St. Julian Street
Post Office Box 9848
Savannah, Georgia 31412-0048
(912) 236-0261
Counsel for Amicus Curiae
Truck Trailer Manufacturers
Association

November 16, 1994